

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the
Invasive Species/Infested Waters
Citation Issued to David Dean Bell;
Citation No. 126721

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION**

This matter came on for a Prehearing Telephone Conference before Administrative Law Judge Barbara L. Neilson on August 27, 2013. David D. Bell and Department of Natural Resources (DNR) Conservation Officer Chris Howe provided sworn testimony during the Conference. The parties agreed that no formal hearing would be needed and that the Administrative Law Judge could make a recommendation based on the record created during the Prehearing Telephone Conference. The OAH record closed at the conclusion of the conference call on August 27, 2013.

STATEMENT OF ISSUE

Was Mr. Bell properly issued a civil citation under Minn. Stat. § 84D.13, subd. 4(4), on June 10, 2013, for transporting his watercraft on a public road with the drain plug in place?

SUMMARY OF CONCLUSIONS

The Administrative Law Judge concludes that Mr. Bell transported his boat on a public road with the drain plug in place on June 10, 2013, in violation of Minn. Stat. § 84D.10, subd. 4(b), and recommends that the Commissioner affirm the Citation.

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On June 10, 2013, Conservation Officer Chris Howe was stationed at the Lake Washington Westwood Public Access site in Le Sueur County, Minnesota. Officer Howe observed Mr. Bell transporting his boat on a county road near the access and proceeding, without stopping, to the access. Officer Howe noted that the drain plug was

in place on the boat. Mr. Bell told him that he had put his drain plug in while at his residence in St. Peter, Minnesota.¹

2. Officer Howe issued Civil Citation No. 126721 to Mr. Bell. The Citation imposed a fine in the amount of \$100.00 and asserted that Mr. Bell had failed to remove the drain plug prior to transporting his watercraft.²

3. Mr. Bell timely appealed the Citation.³

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of Natural Resources have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 116.072, subd. 6.

2. DNR Conservation Officers are authorized to issue warnings or citations to a person who violates Minn. Stat. § 84D.10, subd. 4(b), by failing to remove plugs from water-related equipment before transporting that equipment.⁴

3. The Department has substantiated the violation as set forth in the Citation. Mr. Bell admitted his boat was transported with its drain plug in place, as charged in the Citation.

4. The applicable statute specifies that a \$100 civil penalty may be imposed for failing to have drain plugs or similar devices removed or opened while transporting water-related equipment.⁵

5. It is appropriate that the Commissioner affirm Invasive Species Civil Citation No. 126721 and require Mr. Bell to pay a \$100 fine for violating Minn. Stat. § 84D.10, subd. 4(b).

¹ Testimony (Test.) of Chris Howe.

² Civil Citation No. 126721.

³ See handwritten note requesting appeal of citation (attached to the DNR's letter dated July 9, 2013, referring this matter to the Office of Administrative Hearings).

⁴ See Minn. Stat. § 84D.13, subd. 4(4).

⁵ Minn. Stat. § 84D.13, subd. 5(a)(6).

Based on the Conclusions, and for the reasons set forth in the Memorandum below, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner of Natural Resources **AFFIRM** Invasive Species Civil Citation No. 126721 issued to David D. Bell on June 10, 2013.

Dated: October 22, 2013

s/Barbara L. Neilson
BARBARA L. NEILSON
Administrative Law Judge

Reported: Digitally Recorded; No Transcript Prepared.

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6 (e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. The persons to whom the order is issued may, within those five days, comment to the Commissioner and the Commissioner will consider the comments. The Commissioner must send a copy of the final decision to David D. Bell. The final order of the Commissioner may be appealed pursuant to Minn. Stat. §§ 14.63-14.69. If the Commissioner fails to act within 90 days after the record closes, this recommendation will become the final decision in this matter.

MEMORANDUM

During the Prehearing Telephone Conference, Mr. Bell stated that he always removes the drain plug from his boat when he leaves a lake. He acknowledged that he had put the drain plug back in place while he was at home that morning because he has forgotten to do so at the landing on several prior occasions. He also asserted that his boat has an open design and he could see that nothing was in the boat before he put the plug in place. He emphasized that he had fished in Lake Washington the last time he took the boat out and his boat had been out of the water for six days. He questioned how invasive species were going to get into the boat during the fifteen-minute trip from his home to the access.⁶

Officer Howe conceded that it was unlikely that invasive species would get into the boat during the time it was transported to the access. However, he pointed out that zebra mussel larvae are microscopic and would not be visible to someone looking inside the boat. He also noted that boats with a less open design and a bilge pump could release the larvae once the boat is placed in a body of water. He indicated that the law is designed to limit the spread of invasive species by requiring all boats to be drained, and to simplify enforcement by requiring that everyone be held to the same

⁶ Test. of David Bell.

standard. He also emphasized that the Department has made a significant effort to publicize the statutory requirement that drain plugs must be removed during transport of watercraft *to* lakes as well as *away* from lakes.⁷

Minnesota law requires the removal or opening of drain plugs during transportation of a boat on roadways, regardless of whether the transportation occurs before the boat is placed in the water or after the boat is removed from the water. Mr. Bell does not contest that his boat had its drain plug in place as it was transported on the public roads approximately ten miles from his home in St. Peter to the Westwood public access. The statute does not draw any distinctions based on the design of the boat or where it has been used. Conservation Officers are given the discretion to issue citations for violations. Under all of the circumstances, it is appropriate to recommend that Citation No. 126721 be affirmed.

B. L. N.

⁷ Test. of C. Howe.